



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Salt Lake District Office
2370 South 2300 West
Salt Lake City, Utah 84119



IN REPLY REFER TO:

RECEIVED

MAY 25 1993

DIVISION OF
OIL GAS & MINING

5/003/021

3809
U-70363
(UT-026)

CERTIFIED MAIL P760 541 147
RETURN RECEIPT REQUESTED

MAY 24 1993

Mr. Richard Barson
Interstate Gold, Inc.
64 East 300 South
P.O. Box 85
Clarkston, Utah 84305

Dear Dick:

Your Notice to conduct mining exploration operations under BLM's 3809 surface mining regulations was received on May 6, 1993 and we have assigned your Lucky Boy operation case file number U-70363. This Notice covers your proposed Lucky Boy operations in western Box Elder County, Utah.

- Refer to this number in any future correspondence,
- Submit a report of accomplishments for activities in calendar year 1993
- Amend your notice if there are significant changes during your operation
- Submit a new notice for activities in 1994

In accordance with 43 CFR 3809, we are accepting your notice of intent to conduct mining operations and advising you that your mining activity will occur concurrently with other activities on the public lands. A review of your proposed project by our resource staff both in the office and during a field inspection on Friday, May 14, 1993, raised the following concerns. When proceeding with your on-the-ground operations, please inform your field personnel of the following concerns and take the necessary precautions to prevent undue damage or degradation to these other resources:

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1. Prior to any surface disturbance, we would like to have a field inspection to review your proposal on-the-ground. This inspection could be done jointly with Utah Division of Oil, Gas & Mining as they are interested in looking at this proposal also.

2. The area proposed for your 300' by 300' pit contains pinyon and juniper trees. These are a salable woodland product. Since they will have to be removed prior to your operation, the federal government will have to be reimbursed for this loss at a rate of \$5.00 per cord. Our woodlands product specialist will inventory the area as soon as possible after you designate its boundaries on-the-ground.

3. Prior to any surface disturbance a cultural clearance will have to be completed by our District archeologist, Signa Larralde. Any culturally significant areas identified in her field examination will be avoided. Should surface or subsurface cultural resources be discovered, operations will cease and the Bear River Resource Area Manager notified immediately.

4. During the May 14, 1993, field inspection a red tailed hawk was flushed from some trees adjacent to the proposed road. This raptor is protected under the Migratory Bird Act. A raptor study will be conducted by our wildlife specialist and impacts to raptors, if any, will be analyzed for their effect on your Notice of Intent to mine.

5. The top layer (at least six inches) of soil and vegetation will be removed and stockpiled for use during reclamation. A detailed design will be prepared and submitted as an amendment to the notice, showing cuts and fills, water handling system, and type of surfacing material for the proposed haul road. Reclamation will consist of grading all disturbed areas so that the finished surface blends with the line and form of the surrounding topography. The stockpiled topsoil and vegetation will be spread evenly over the recontoured area then reseeded with the seed mixture approved by the authorized officer.

6. All trash resulting from your operation will be cleaned up and removed from the area. This is to be deposited in an approved landfill or receptacle. No oil or grease will be drained on the ground. Disposal of these wastes will be in an approved sanitary landfill.

7. During the recent field inspection three unplugged drill holes were observed. This is a violation of state law and should be corrected at the earliest opportunity. These drill holes and any others in the area should be plugged according to State of Utah mining regulations.

8. Reclamation work should be completed as much as possible on areas disturbed under the previous Notice.

9. Noxious weeds are an increasing problem, Interstate Gold & Gas should take an active role in preventing the spread of noxious weeds in the area. The control of noxious weeds must be conducted in accordance with local, state, and federal laws.

As was mentioned in our telephone conversations with you the question of common variety is raised in this situation. We have reviewed the material that you intend to mine. Our preliminary determination is that this material is a common variety of stone and is only available through purchase from the government, not through location under the mining law. Common varieties were removed from location in Public Law 167, July 23, 1955. Uncommon varieties are still subject to location. We use the standards identified in the case titled McClarty v. Secretary of Interior, 408 F. 2d. 907, 908 (9th Cir. 1969) to guide us when we try to distinguish common variety materials from uncommon variety materials. These standards are as follows:

- There must be a comparison of the mineral deposit in question with other deposits of such minerals generally;
- The mineral deposit in question must have a unique property;
- The unique property must give the deposit a distinct and special value;
- If the special value is for uses to which ordinary varieties of mineral are put, the deposit must have some distinct and special value for such use;
- The distinct and special value must be reflected by the higher price which the material commands in the marketplace, or by reduced cost or overhead so that the profit to the claimant would be substantially more.

It is important to note that the distinction between common variety and uncommon variety is separate from the "prudent man rule" for mining claims. Many common varieties can be profitably mined. Such deposits would pass the "prudent man rule", but do not support a mining claim because they are not available for location.

We are presently of the opinion that this material is common variety for the following reasons. The material which you wish to mine has been mapped by Robert Compton as "Metamorphosed Manning Canyon (?) Shale" (U.S.G.S. Map I-72, 1972). Shales and low grade slates are of wide spread occurrence in the West. A field investigation by Philip Allard of this office on May 14, 1993, indicated that Compton's map is accurate. Our conversations with you indicate that the reason you want this material is because it is black. Color is not sufficient to make the material unique.

We would be happy to work with you should you wish to purchase this material. In order to purchase the material you would need to relinquish the portion of your mining claim on which the deposit occurs. After the sale is made you could refile your claim. This is because our regulations do not permit us to sell materials from mining claims. We can sell up to 100,000 cubic yards per sale to you without competition. We can issue up to two noncompetitive sales to you per calendar year. Were you to require more than 200,000 cubic yards of material per calendar year, we would be required to sell the material competitively.

BLM Washington Office Instruction Memorandum 89-235 requires that we include the following language in letters which accept notices for materials which we have made preliminary determinations that the material to be mined under the notice is common variety:

This is to advise you that we are of the opinion that the subject material does not possess a unique property giving the deposit special and distinct value, and therefore, is a "common variety" mineral material not subject to location under the mining laws. You are further advised that if a final determination by the Department of Interior is made that this material is, in fact, "common variety", you could be responsible to the United States for the value of this material, damage to the land, and administrative costs of recovering such compensation.

The acceptance of this notice does not serve as a determination of the validity, or lack thereof, of any mining claim associated with this notice.

Thank you for your concern and positive attitude towards conserving and protecting our natural resources. If you have any questions, please feel free to contact Dan Washington, our Surface Protection Specialist for 3809 activities at (801) 977-4300.

Sincerely,

Leon E. Berggren
Bear River Resource Area Manager

cc: Anthony A. Gallegos, UDOGM
Woody Whitney, Wilson-Davis & Co.
Kiran L. Bhayani, UDWQ